

## **STATUS OF THE CLAIMS**

Claims 1-22 were originally filed in this patent application. In response to the first office action dated 05/08/2008, an amendment was filed on 06/19/2008 that cancelled claims 1-6 and 13-22, and amended claims 7-8 and 10-11. In the pending office action, claims 7-12 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,745,879 to Wyman in view of U.S. Patent No. 6,012,032 to Donovan *et al.* (hereinafter “Donovan”). No claim was allowed. In this amendment, claims 7-8 and 10-11 have been amended, and claim 23 has been added. Claims 7-12 and 23 are currently pending.

## **REMARKS**

### **Reservation of Patent Rights**

In this amendment, applicant has amended claims 7-8 and 10-11. Applicant is not conceding that the subject matter encompassed by claims 7-8 and 10-11 prior to the amendments herein is not patentable over the art cited by the examiner. Claims 7-8 and 10-11 were amended in this amendment solely to facilitate expeditious prosecution of the remaining claims. Applicant respectfully reserves the right to pursue claims, including the subject matter encompassed by claims 7-8 and 10-11 as presented prior to this amendment and additional claims in one or more continuing applications.

### **Rejection of claims 7-12 under 35 U.S.C. §103(a)**

The examiner rejected claims 7-12 under 35 U.S.C. §103(a) as being unpatentable over Wyman in view of Donovan.

In the rejection, the examiner cites Wyman as allegedly teaching if unused billed capacity for the same type of resource is available, assigning the unused billed capacity

of the same type of resource to the selected resource, citing col. 10 lines 8-19 and col. 14 lines 20-42 of Wyman.

Wyman teaches licenses for software products. Column 14 lines 21-28 of Wyman state:

A consumptive unit based license, indicated in policy field 43, grants to the holder a specific number of initial license units (from field 42) and specifies the policy used to account for the consumption of those units. A software product 17 which is being managed by a consumptive license will cause an appropriate number of license units to be consumed to reflect the services provided by the product. Once consumed, units cannot be reused.

Wyman deals with a consumptive unit based license. The units used in a consumptive unit based license are all in a common pool, and are not assigned or allocated to any specific user or computer system. Claim 7 has been amended herein to recite:

. . . when the first hardware resource is required, determining whether unused billed capacity assigned to a second hardware resource of the same type as the first hardware resource is available; and  
when unused billed capacity assigned to the second hardware resource is available, assigning the unused billed capacity assigned to the second hardware resource to the first hardware resource.

Nowhere does Wyman teach consumptive units that are assigned to any particular resource. For this reason, Wyman does not teach or suggest determining whether unused billed capacity *assigned to a second resource* of the same type as the first resource is available. Furthermore, Wyman does not teach when unused billed capacity assigned to the second resource is available, assigning the unused billed capacity assigned to the second resource to the first resource. Wyman simply teaches when there are consumptive units available, a license may be granted, which decreases the total number of consumptive units available for use by all users and processes. Because Wyman does not teach or suggest consumptive units that are assigned to specific resources, claim 7 as amended is allowable over the combination of Wyman and Donovan cited by the

examiner. Applicant respectfully requests reconsideration of the examiner's rejection of claim 7 under 35 U.S.C. §103(a) in light of the amendments herein.

Claim 11 includes limitations similar to those in claim 7 discussed above, and is therefore allowable for the same reasons. Claims 8-10 and 12 depend on independent claims that are allowable for the reasons given above. As a result, claims 8-10 and 12 are allowable as depending on allowable independent claims.

#### New claim 23

Claim 23 has been added herein to recite many of the limitations shown in FIG. 4. No new matter has been added. Applicant respectfully requests allowance of claim 23.

#### Conclusion

In summary, none of the cited art, either alone or in combination, teach, support, or suggest the unique combination of features in applicant's claims presently on file. Therefore, applicant respectfully asserts that all of applicant's claims are allowable. Such allowance at an early date is respectfully requested. The Examiner is invited to telephone the undersigned if this would in any way advance the prosecution of this case.

Respectfully submitted,

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